COMMENTS AND RESPONSES
ON
DRAFT PERMIT

Permit Type:	National Pollutant Discharge Elimination System (NPDES)
Permit Number:	WA0040771
Permit Applicant:	Reichhold, Inc. 3320 Lincoln Avenue Tacoma, WA 98421
Permitting Authority:	State of Washington Department of Ecology Southwest Regional Office Post Office Box 47775 Olympia, Washington 98504
Permit Writer:	Norman K. Schenck, P. E.

After a tentative decision was made to issue a permit, interested parties were invited to comment on the draft permit during a 30-day period ending on or about March 2, 2004. One respondent, representing an environmental interest group, submitted comments. No public hearing on the draft permit was requested or held. The comments and the agency responses, including any changes to the permit as a result of the comments, follow. Comments may have been abbreviated and paraphrased. The full texts of the comments are maintained on file by the department as part of the administrative record of the permit decision. The final decision may be contested as provided for in Section 310 of Chapter 43.21B of the Revised Code of Washington. (Please follow the directions for appeal as set out in the cover letter.)

Comment No 1. Stormwater discharge: "The permittee is authorized to discharge site stormwater. However, there are no numeric effluent limitations on this discharge. Limitations and monitoring should be implemented for this discharge as with any other stormwater permit."

Response: In lieu of effluent limits, source control measures to reduce or prevent pollutants are specified in the permit. This is consistent with EPA's general strategy for controlling pollutants in storm water runoff. This is a site of ongoing clean-up of land and water contamination from past chemical production. The activities on this site (including contaminated soil removal and capping of contaminated areas) could only decrease the potential for contamination of rain water that runs off the site. The monitoring that has been required by the previous permits has shown that, indeed, the concentration of pentachlorophenol in the runoff discharge has diminished over time.

While there are no effluent limits, there are monitoring requirements, and Condition S6 of the draft permit does set numeric trigger points at which specific source control measures must kick in. This strategy has worked over the preceding permit terms to find and remove the sources, and in turn reduce the pollutants in the discharge. Sampling over the entire preceding permit term showed no discharges that have reached the trigger point concentrations, and most samplings have been near or below the analytical detection limit of 1 microgram per liter.

Comment No. 2 Ammonia: "Testing and effluent limitations for ammonia, which was found in the treatment system discharge during routine testing, was required for the original permit and should continue to be required. Ammonia is highly toxic to aquatic life including the threatened and endangered species that utilize Commencement Bay. Threat levels may change as work progresses and the only way to detect those changes is by monitoring the levels."

Response: The original permit did not require testing and effluent limitations for ammonia in the discharge. The permit writer could show no reasonable potential for the discharge to cause or contribute to violation of any receiving water quality standard for ammonia. That original determination was based on an assumption that the ambient receiving water concentration was not significant. The original permit did require monitoring of the *receiving water* for ammonia to check that assumption. Accounting for the background concentration indicated by these monitoring results, the fact sheet that accompanied the latest draft permit showed that the calculated minimum dilution in the allottable mixing zone would decrease the highest recorded concentration of ammonia in the discharge to a level about one-twentieth the receiving water quality standard. On that basis, the permitting authority concluded that there is no reasonable potential that the discharge would cause or contribute to violations of the standards for ammonia. The ammonia testing results included with the latest permit application would not change this conclusion.

Comment No. 3. Zinc: "Although there is no known source for the zinc on the remediation site, and the treatment is not designed to remove it, it is being discharged from the site in levels that exceed state water quality standards as evidenced by the need for dilution. For this reason, the permit should require limitations, monitoring and treatment/removal for zinc."

Response: As the fact sheet that accompanied the draft permit explains, the permit contains no limits or monitoring requirements for zinc because the permit writer could show no reasonable potential that the discharge would violate any receiving water standard for zinc outside the allotted mixing zone. The permitting authority may legitimately consider dilution within a limited, allotted mixing zone in evaluating the need for water-quality-based effluent limitations.

Comment No. 4. Pentachlorophenol: "Pentachlorophenol, an acute neurotoxin and endocrine disrupter has been identified as a "Group B2, probable human carcinogen" by the United States Environmental Protection Agency, and its use has been banned in 26 countries. Since it is a major focus of the clean up, we will consider the remediation of this pollutant sufficient progress towards meeting the goals of protecting the waters of Commencement Bay from both Pentachlorophenol and it's byproduct, 2,4,6 – Trichlorophenol."

Comment No. 5. Mixing zone: "As a remediation site, this discharger is undertaking extraordinary measures not normally found in NPDES permits of operating facilities. However, a mixing zone, which allows discharge of pollutants that exceed the state water quality standards into Commencement Bay, is not in the spirit of the Clean Water Act. The objective of this act is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." The routine authorization of mixing zones is counterproductive to meeting this objective. It is clearly stated in section 1251 of the CWA that, "it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited", and that "it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985". The Department of Ecology's failure to phase out these mixing zones or even to include sunset language, which will encourage movement towards the elimination of these zones does nothing to achieve the goals of the CWA and is in direct violation of the spirit of the act. This wholesale authorization of mixing zones violates water quality standards determined and implemented by the State of Washington."

Response: A mixing zone is a common provision in NPDES permits. Under EPA auspices and guidance, Washington and many other states allow mixing zones, where dilution with a relatively small amount of receiving water can decrease the concentration of pollutants to the allowable standard. Besides recognizing and approving these allowances, EPA also develops, supports and publishes scientific methods for determining or predicting the minimum dilution in any given situation (to assure standards are met at the boundaries of the allotted mixing zone).

No changes were made in the final permit decision as a result of the comments received on the draft permit.